United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/753
16 July 1996

ENGLISH
ORIGINAL: FRENCH

ADMINISTRATIVE TRIBUNAL

Judgement No. 753

Case No. 742: MAQARI

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Hubert Thierry, Vice-President; Mr. Francis Spain;

Whereas, on 14 March 1995, Ibtisam Musa Maqari, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as "UNRWA"), submitted, under article 12 of the Statute of the Tribunal, an application requesting clarification of Judgement No. 681, rendered by the Tribunal on 11 November 1994;

Whereas the pleas of the application read, in part, as follows:

"...

[That the Tribunal should indicate whether its]

3. ... judgement implicates, *ipso jure*, [the] rescission of the contested decision ...

...

6. [The Tribunal should order that] any payment in local currency [be] based on the United Nations operational rate of exchange available at the time.".

Whereas the Respondent filed his answer on 19 June 1995;

Whereas the facts of the case were set out in Judgement No. 681;

Whereas the Applicant's principal contention is:

The Applicant is entitled to payment in United States dollars, at the United Nations operational rate of exchange available on the date of payment, of the compensation awarded by the Tribunal.

Whereas the Respondent's principal contention is:

The Applicant's submission does not comply with article 12 of the Statute of the Tribunal; it does not identify "the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal".

The Tribunal, having deliberated from 2 to 16 July 1996, now pronounces the following judgement:

I. The Applicant's claim is based on article 12 of the Statute of the Tribunal, which provides that an application may be made for a revision of a judgement on the basis of the discovery of some fact "of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision".

The Applicant does not identify, in this instance, any new fact within the meaning of article 12 of the Statute of the Tribunal of such a nature as to give rise to the revision of Judgement No. 681 of 11 November 1994, which ordered the Respondent to "pay to the Applicant compensation in an amount equal to two years of her net base salary as of the date of her separation from service".

The application is therefore not receivable.

II. The Tribunal also notes, for whatever purpose it may serve, that the above-mentioned terms of paragraph VII of Judgement No. 681 should not be interpreted as entitling the Applicant to the payment of compensation in a currency other than that in which her salary was paid, i.e., in this case, the Syrian pound.

III. The application is rejected.

(Signatures)

Samar SEN
President

Hubert THIERRY
Vice-President

Francis SPAIN
Member

Geneva, 16 July 1996

R. Maria VICIEN-MILBURN
Executive Secretary

United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/754
16 July 1996

ENGLISH
ORIGINAL: FRENCH

ADMINISTRATIVE TRIBUNAL

Judgement No. 754

Case No. 842: GEADAH

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Hubert Thierry, Vice-President; Mr. Mikuin Leliel Balanda;

Whereas, at the request of Subhi Iskandar Geadah, a former staff member of the United Nations Development Programme (hereinafter referred to as UNDP), the President of the Tribunal, with the agreement of the Respondent, extended to 30 November 1994 the time limit for the filing of an application to the Tribunal;

Whereas, on 30 November 1994, the Applicant filed an application which did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 28 February 1995, the Applicant, after making the necessary corrections, again filed an application in which he requested the Tribunal to grant him:

> "... correction of his gross salary effective the date of his promotion in 1987 to be at a level and step higher than his previous gross salary before promotion. His gross salary at FSL/7 in 1987 was equivalent to that of P.4/VII gross salary and not the P.3/XIII he received; ...
>
> A. [and to pay him compensation equivalent to] $136,515

...

B. ... damage resulting from placement for three and [a] half years on unjustified leave [equivalent to] $91,875

(e) ... compensation for pain of mind; for damage caused to his standing in his professional field; damage and continued pressures placed on his mental and physical health; for other mental and physical trauma caused and continued without relief [equivalent to] $122,000."

Whereas the Respondent filed his answer on 13 April 1995;

Whereas the Applicant filed written observations on 26 June 1995;

Whereas the facts in the case are as follows:

The Applicant was locally recruited by the United Nations Relief and Works Agency for Palestine Refugees in the Near East in Lebanon in 1957. In 1960, he was seconded to the United Nations Operation in the Congo as Assistant Cashier at the FSL-3 level. In 1965, he was transferred to UNDP, where he served as Finance Clerk in Rwanda at the FSL-4 level until 1967. He was subsequently assigned to other posts, including Morocco, Mauritius, Syria, Bahrain, Ankara and Abu Dhabi. Finally, on 3 January 1984, he was reassigned to Madagascar and, on 1 January 1987, promoted to the P-3 level.

From 17 November 1987 to 12 May 1988, he was seconded to UNDP in Senegal. Effective 18 January 1989, he was transferred to the Gambia. From 26 May 1989 to 19 November 1992, the Applicant was placed on special leave with full pay. On 20 November 1992, he was temporarily assigned to UNDP headquarters, where he remained until 19 February 1993, the date of his retirement.

In a letter dated 21 June 1984, the Officer-in-Charge of the Division of Personnel informed the Applicant, who at the time was posted to Madagascar, that "... we are in the process of identifying an alternative assignment more in line with your family needs". On 18 July 1984, the Division of Personnel informed the Applicant that there were no suitable

vacant posts in New York or Washington and that, for the time being, there were no other possible duty stations.

In August 1984, two physicians recommended that the Applicant should be transferred to another duty station for medical reasons. On 24 September 1984, the Division of Personnel informed the Applicant by cable that, although Madagascar was usually a four-year duty station, "for medical and compassionate grounds, we are prepared to consider your move now". The cable took note of the fact that the Applicant was interested in an assignment restricted to New York or Canada, and stated that there was no UNDP office in Canada and no post available at Headquarters.

In an audit report dated 4 May 1987, it was noted that the Applicant had been assigned to Madagascar at the beginning of 1984, that he had fallen ill several months after his arrival and had been replaced in his duties and that "three years after his arrival, and while there have already been three successors filling his post of Administrative Officer, [the Applicant], who remains assigned to the Madagascar office, is still not carrying out any duties there and does not even figure in the organizational chart provided to the auditors". It was further noted in the report that "the Division of Personnel, although apprised of the matter on several occasions by the office ..., has not seen fit to transfer the person in question to an office more suited to his abilities and background", and that "the concern not to perpetuate a situation felt to be temporary has led to a situation in which the person in question has not been assigned any real work".

In reply to a request for information from the United Nations Board of Auditors regarding these observations, the Resident Representative in Madagascar stated that the situation of the Applicant "is a source of constant frustration for the Resident Representative who, since his arrival two years ago, has been trying to convince Headquarters to reassign the officer in question".

On 11 March 1987, the Applicant again requested that he be transferred to New York in order to provide his children with better educational opportunities and to avail himself of

medical assistance. In a reply dated 2 July 1987, the Associate Administrator noted that, during the 1987 promotion review, the Applicant had been promoted to the P-3 level, an action which, he pointed out, "has partly been taken to facilitate your reassignment to UNDP or Agency Headquarters if and when a suitable post would come up". He added that such a post was currently not available but that "the Division of Personnel continues to identify each opportunity".

In November 1987, the Applicant was seconded to Senegal and, on 18 January 1989, he was assigned to the Gambia. On 22 May 1989, the Director of the United Nations Medical Service authorized the evacuation, under medical supervision, of the Applicant to France and granted him sick leave with a daily subsistence allowance until 25 July 1989. In a telex dated 8 August 1989, the Applicant was informed of the recommendation of the Director of the United Nations Medical Service that "you should not return [to the] Gambia due [to] your health condition". On 26 May 1989, the Applicant was placed on special leave with full pay until 31 December 1989 "pending identification of a new duty station". This special leave was extended twice, until the end of 1992.

On 14 December 1990, the Director of the United Nations Medical Service informed the Division of Personnel of UNDP that the Applicant "should only be assigned to Headquarters".

In reply to the Applicant's request for information, on 14 August 1992, the Division of Personnel confirmed that his retirement date was 10 January 1993, and inquired whether he would be interested in a short temporary assignment to the Finance Section of the Office for Project Services (OPS) in New York until his retirement. The telex stated that "if this is not of interest to you we will continue your status on [special leave with full pay] until separation".

On 22 August 1992, the Applicant accepted the offer to work at OPS/New York.

On 20 November 1992, the Applicant began his temporary assignment at UNDP headquarters. At the same time, his special leave with full pay was retroactively approved for the period from 1 January 1991 to 19 November 1992. On 19 February 1993, the Applicant

retired.

On 12 March 1993, the Applicant requested the Secretary-General to redress the failure of UNDP to find him an acceptable post that would have enabled him to improve his professional skills and carry out duties that would have advanced his career. The Applicant further requested that his promotion in 1987 to the Professional category be reviewed, since the promotion had resulted in a reduction of his salary and of the allowances he had been receiving.

On 26 March 1993, the Applicant filed an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 3 May 1994. Its considerations and conclusions are as follows:

"*Considerations*

6. The Panel agreed with [the] Respondent that if each of the decisions objected to by [the] Appellant was considered in isolation, the appeal would be time-barred. It felt, however, that if there were a pattern of discrimination or mistreatment over a period of years as alleged by [the] Appellant, the appeal would be receivable. It reviewed the files to see whether there was evidence of such a pattern.

7. The Panel found reason to understand and sympathize with [the] Appellant's feelings of frustration, but it found no evidence of any discriminatory action by UNDP. On the contrary, it did find evidence of attempts - albeit, ineffective and tardy - to help [the] Appellant find a posting in North America.

Conclusion

8. The Panel concluded, therefore, that the appeal was not receivable."

On 11 May 1994, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed him that the Secretary-General "has taken note of the Board's conclusion that your appeal was not receivable, and accordingly, has decided to take no further action in respect of your case".

On 28 February 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant is filing an appeal against a series of decisions each of which had new consequences at a later date, so that he was the target of systematic and continuing discrimination.

2. The Respondent had no legitimate reason to assign the Applicant to duty stations where his health was likely to deteriorate and to keep him in a state of uncertainty for a long time, which prevented him from pursuing his career in the normal manner.

Whereas the Respondent's principal contentions are:

1. The appeal was time-barred and the JAB properly exercised its discretionary power in not recommending that the time limit be waived.

2. There is no credible evidence that the decisions against which the appeal was filed were biased or were taken for some other unjustified reason.

The Tribunal, having deliberated from 11 to 16 July 1996, now pronounces the following judgement:

I. The present case reveals the poor management by UNDP of one of its staff members. It appears that, for ten years, that is, from his assignment to Madagascar in 1984, as Administrative Officer, until his retirement in February 1993, the Applicant performed virtually no activity of any use to the Organization of which he was a relatively high-ranking member. Indeed, he had barely commenced his duties in Madagascar in January 1984 when a replacement was appointed to his post, and was followed by several others. As a result, the Applicant, who suffered from poor health, was not assigned any specific duty for the entire

duration of his mission to Madagascar, which lasted until 1988. This situation gave rise to observations by the auditors assigned by the United Nations Board of Auditors in 1987 to inspect the Antananarivo office to which the Applicant was in principle attached, although these observations did not elicit much of a response from the UNDP authorities.

Assigned to the Gambia in 1989, the Applicant did go but had to be medically evacuated four months later to the south of France, where he remained until 1992 on special leave with pay. At that time (November 1992), shortly before his retirement, the Applicant was assigned to UNDP headquarters in New York, where he worked for three months, until 19 February 1993, the effective date of his retirement and his return to the Côte d'Azur.

II. The Applicant believes that his inactivity during this whole period was harmful to him. He considers the reason for such inactivity to be discrimination towards him which deprived him of an appointment to UNDP headquarters in New York, in accordance with his wishes and abilities. He claims that such discrimination was the result of a deliberate policy on the part of the UNDP Administration to keep him out of the way.

III. The review of the facts as reported by the Applicant himself reveals that there is nothing to corroborate his allegations or justify his claims. His inactivity during his stay in Madagascar was due to poor health and the fact that he was constantly waiting for another assignment or, to be exact, his assignment to New York, in his view the only acceptable duty station but where, however, there was no post available for him. Moreover, it was at his request that his brief mission to the Gambia was terminated.

During this time, the Applicant received a promotion. From a Field Service Level-7 post he was promoted in 1987 to the P-3 level, which in principle should have facilitated his assignment to New York and, at the very least, demonstrated the Administration's goodwill towards him.

IV. The Applicant contests the decisions which UNDP successively adopted concerning him: his assignment to Madagascar, his assignment to the Gambia and the special leave with pay which he received from 1989 to 1992. He claims compensation for damages caused to him, namely "for pain of mind; for damage caused to his standing in his professional field; damage and continued pressures placed on his mental and physical health; for other mental and physical trauma caused and continued without relief". The Applicant also requests compensation for the loss caused to him by his promotion in 1987 to the P-3 level, which resulted in total remuneration less than what he had received at his previous FSL-7 post.

V. The JAB deemed that, if each of the decisions objected to by the Appellant was considered in isolation, his appeal would be time-barred but would have been receivable if he had been, as he alleges, the target of deliberate discrimination during the years of his service in UNDP. The Board totally rejected the latter assumption and, in the light of the facts set out above, the Tribunal shares the Board's conclusion on the subject.

VI. For these reasons, the Tribunal rejects the appeal.

(Signatures)

Samar SEN
President

Hubert THIERRY
Vice-President

Mikuin Leliel BALANDA
Member

Geneva, 16 July 1996

R. Maria VICIEN-MILBURN
Executive Secretary

United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/755
2 August 1996

ENGLISH
ORIGINAL: FRENCH

ADMINISTRATIVE TRIBUNAL

Judgement No. 775

Case No. 836: MIKHAYLIN

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, Vice-President, presiding; Mr. Mikuin Leliel Balanda; Mr. Mayer Gabay;

Whereas, on 20 December 1994, Alexandre Mikhaylin, a former staff member of the United Nations, filed an application which did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 31 January 1995, the Applicant, after making the necessary corrections, again filed an application in which he requested the Tribunal:

"(a) *To rescind* the decision ... to delete the [Applicant's] entitlement to dependency allowance for [his] child Arthur;

(b) *To order* the Applicant's immediate repayment of dependency allowance in amount of $2,430.89;

(c) *To find and rule* that the decision of the Respondent to delete the entitlement to dependency allowance was flawed by the intrusion of prejudice, discrimination and other extraneous factors and marred by irregularities in procedure;

(d) *To award* the Applicant, as cost, an additional compensation sum of $5,000.00 for legal expenses and actual, consequential and moral damages suffered by the Applicant ...".

Whereas the Respondent filed his answer on 6 March 1995;

Whereas the Applicant filed written observations on 31 July 1995;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 8 October 1989, on a two-year fixed-term appointment as a translator at the P-3 level, in the Russian Service of the Translation Division of the Department of Conference Services. He had been seconded from the Government of the Union of Soviet Socialist Republics (USSR). His appointment was extended several times on a fixed-term basis until 31 January 1992, the date of his separation from the Organization.

A Personnel Action Form dated 24 October 1989, which contains information concerning the Applicant's recruitment, indicates that the Applicant's dependants were spouse Antonina and child Arthur, but that the dependants' dates of birth and marital status remained to be verified.

On 1 December 1989, the Applicant requested the payment of dependency benefits for his stepson and certified that his stepson was living with him and that he supported him. The Applicant subsequently submitted a letter from the Embassy of the USSR, dated 18 December 1989, certifying that the child was his dependant. In a memorandum dated 11 January 1990, the Officer-in-Charge of the Allowances and Benefits Unit requested the Applicant to submit a number of documents, namely, the child's birth certificate, an affidavit from the Applicant's spouse, and the divorce decree indicating the provisions made for the support of the child. The Officer-in-Charge of the Allowances and Benefits Unit added: "Once the above requested is submitted, your dependency status will be reviewed." These documents were never submitted.

On 25 November 1991, the Applicant requested the Chief of the Allowances and Benefits Unit to stop dependency payments for his wife and stepson. The Administration continued to make dependency allowance payments for the Applicant's wife and stepson until 14 April 1992. On that date, the Chief of the Separations Sub-Unit/Payroll of the Accounts Division informed the Applicant that he had received an overpayment of $2,430.89. She added: "This represents the recovery of the dependency allowance paid to you on behalf of your child Arthur for whom the entitlement was never established." The Chief of the Sub-Unit requested the Applicant to repay that sum. On 9 September 1992, the amount of the overpayment was deducted from the Applicant's repatriation grant.

On 22 October 1992, the Applicant wrote a letter to the Chief of the Separations Sub-Unit/Payroll of the Accounts Division protesting against the deduction of the dependency allowance from his terminal emoluments, a deduction that he termed "an outrageous mistake because my stepson Arthur under the age of 18 years resided with me during all the length of my contract without interruptions, and I provided main and continuing support for him". He pointed out that he had submitted "all the necessary evidence of the dependency" and requested that this "mistake" be rectified.

In a letter dated 31 December 1992, the Officer-in-Charge of the Allowances and Benefits Unit informed the Applicant that the decision would be upheld unless he submitted the evidence requested on 11 January 1990, in which case "the entitlement ... could be established, retroactively". The Officer-in-Charge noted that "the letter of the Embassy of the USSR dated 28 October 1989, did not provide the above-mentioned required documentary evidence sufficient to entitle you to a dependency allowance on behalf of your stepson".

On 10 September 1993, the Applicant requested a review of the decision "to delete his entitlement to dependency allowance" for his stepson. On 15 November 1993, he submitted a statement of appeal to the Joint Appeals Board (JAB). The Board adopted its report on 19 August 1994. Its considerations, recommendations and observations read, in part, as follows:

"*Considerations and Recommendations*

...

17. The Panel noted that even if one accepted Appellant's argument that the decision to be reviewed was that of 9 September 1992, when the United Nations deducted from his terminal emoluments the sum paid to him as child's allowance, his request for review, dated 10 September 1993, was ten months too late.

18. This being so, the Panel then examined whether there were 'exceptional circumstances' which warranted the waiver by the Panel of the time-limits, in accordance with paragraph (f) of rule 111.2. The Panel noted that while the number of administrative errors in connection with the payment and subsequent deduction of the benefit for Appellant's step-child might have excused the failure on the part of the Appellant to abide by time-limits because of the confusion caused thereby, the Appellant did not allege that this was the reason for his failure to do so.

19. The only explanation advanced by the Appellant to justify the delay is contained in his request for administrative review, submitted on 10 September 1993. He states that the reason for the late submission is that he wanted to 'avoid messing up due process' in connection with another appeal he had submitted, which was then pending before the JAB.

20. However, when the Appellant eventually requested an administrative review of the decision regarding the child's allowance, the other case was still pending. He was informed of the JAB having completed its consideration of that appeal on 17 December 1993 and of the final decision thereon by the Secretary-General on 19 April 1994. The Panel therefore found that there were no exceptional circumstances present to justify waiver of the time-limits under Art. 111.2 in this case. The Panel unanimously held that the appeal was therefore not receivable.

General Observations

21. While the Panel disposed of the appeal on procedural grounds, the Panel nevertheless wishes to offer some general comments in respect of the case. The Panel noted the lack of clarity regarding the procedures for claiming the allowance, such as the original 'certification' of entitlement by the staff member, the subsequent discretionary request to provide proof of dependency, the absence of provisions dealing with the effect of failure to supply such proof on payments made prior to the request, etc. Also, the nature of the proof required should be detailed in the rules or

in an administrative instruction, which should also provide for acceptable alternatives to the normal evidentiary documentation in cases where that is not obtainable."

On 31 January 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The contested administrative decision was executed nine months after the Applicant's separation. Since the Applicant was no longer at the United Nations, he had not been properly advised of the time-limits and case handling.

2. The Applicant had another case pending before the JAB, and the Administration had shown readiness for negotiations. The Administration had acknowledged a number of mistakes which had borne heavily on the outcome of the case.

3. The JAB had noted the lack of clarity regarding the procedures for claiming the allowance.

Whereas the Respondent's principal contention is:

The appeal is time-barred and the JAB properly exercised its discretion in not recommending that the time-limit be waived.

The Tribunal, having deliberated from 11 July to 2 August 1996, pronounces the following judgement:

I. The Applicant, a national of the Union of Soviet Socialist Republics, worked as a translator at the United Nations from 8 October 1989 to 31 January 1992.

II. During his service, the Applicant received a dependency allowance for his stepson Arthur. However, the Administration considered that the Applicant had not provided evidence that his stepson was living with him and that he supported him. Consequently, the Administration deducted from his repatriation grant the sum of $2,430.89, which had been paid to him as a dependency allowance. This is the disputed matter that he submitted to the Tribunal.

III. In his application, the Applicant requests the Tribunal to rescind the afore-mentioned decision and to order the repayment to him of the deducted amount, and to rule that the decision taken was flawed by prejudice, discrimination, procedural irregularities and other extraneous factors. He therefore requests the Tribunal to award him an additional sum of $5,000 for expenses and moral damages.

The Respondent maintains that the appeal is time-barred and the JAB properly exercised its discretion in not recommending that the time-limit be waived.

IV. The Tribunal notes that the decision to deduct the overpayment was taken on 14 April 1992. The decision was made known to the Applicant on that date, although it was not executed until 9 September 1992. The Applicant filed an appeal against that decision on 10 September 1993 although, under the provisions of staff rule 111.2 (a), such an appeal must be made within two months from the date of notification of the contested administrative decision.

V. The Tribunal endorses the opinion of the JAB. It considers that this appeal was time-barred. There were no exceptional circumstances present to warrant the waiver of the time-limit for the Applicant, although he stated that he had not filed an appeal in order not to interfere with the consideration of another appeal he had filed, which was pending before the Board.

The Tribunal considers, moreover, that the Board had the discretionary power to take such a decision in the circumstances of the case, subject to review by the Tribunal.

VI. For these reasons, the Tribunal declares the application inadmissible and rejects all pleas.

(Signatures)

Hubert THIERRY
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Mayer GABAY
Member

Geneva, 2 August 1996

Maria VICIEN-MILBURN
Executive Secretary